

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 DARYL E. SAYLES,

5 Plaintiff,

6 v.

7 STATE OF NEVADA et al.,

8 Defendants.
9

Case No. 2:18-cv-01007-GMN-VCF

ORDER

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11 This action began with a *pro se* civil rights complaint filed pursuant to 42 U.S.C. §
12 1983 by a former state prisoner. On August 5, 2019, this Court issued an order denying
13 the application to proceed *in forma pauperis* for prisoners as moot because Plaintiff was
14 no longer incarcerated. (ECF No. 4 at 5). The Court ordered Plaintiff to file a fully
15 complete application to proceed *in forma pauperis* for non-prisoners or pay the full filing
16 fee of \$400.00 within thirty (30) days from the date of that order. (*Id.*) The thirty-day
17 period has now expired, and Plaintiff has not filed an application to proceed *in forma*
18 *pauperis* for non-prisoners, paid the full filing fee, or otherwise responded to the Court's
19 order.

20 District courts have the inherent power to control their dockets and "[i]n the
21 exercise of that power, they may impose sanctions including, where appropriate . . .
22 dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
23 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure
24 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
25 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for
26 noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.
27 1992) (affirming dismissal for failure to comply with an order requiring amendment of
28 complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal

1 for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of
2 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming
3 dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
4 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with
5 local rules).

6 In determining whether to dismiss an action for lack of prosecution, failure to obey
7 a court order, or failure to comply with local rules, the court must consider several factors:
8 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
9 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
10 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
11 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
12 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

13 Here, the Court finds that the first two factors, the public's interest in expeditiously
14 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
15 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
16 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
17 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
18 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
19 disposition of cases on their merits—is greatly outweighed by the factors in favor of
20 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
21 the court's order will result in dismissal satisfies the "consideration of alternatives"
22 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
23 F.2d at 1424. The Court's order requiring Plaintiff to file an application to proceed *in forma*
24 *pauperis* for non-prisoners or pay the full filing fee within thirty (30) days expressly stated:
25 "It is further ordered that, if Plaintiff fails to timely file an application to proceed *in forma*
26 *pauperis* for non-prisoners or pay the full filing fee, the Court will dismiss this case with
27 prejudice." (ECF No. 4 at 5-6). Thus, Plaintiff had adequate warning that dismissal would
28 result from his noncompliance with the Court's order to file an application to proceed *in*


1 *forma pauperis* for non-prisoners or pay the full filing fee within thirty (30) days.

2 It is therefore ordered that this action is dismissed with prejudice based on
3 Plaintiff's failure to file an application to proceed *in forma pauperis* for non-prisoners or
4 pay the full filing fee in compliance with this Court's August 5, 2019, order.

5 It is further ordered that the inmate early mediation conference scheduled for
6 October 18, 2019 (ECF No. 7) is vacated.

7 It is further ordered that the Clerk of Court shall close the case and enter judgment
8 accordingly.

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10 DATED THIS 12 day of September 2019.

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14 Gloria M. Navarro, Judge
15 United States District Court
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